

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF SEPTEMBER 7, 2012
Prepared August 30, 2012

ITEM NUMBER: 3

SUBJECT: South San Luis Obispo County Sanitation District, Administrative Civil Liability Complaint No. R3-2012-0030

CONTACT:

KEY INFORMATION

Discharger:	South San Luis Obispo County Sanitation District
Facility Name:	Wastewater Treatment Facility
Facility Address:	1600 Aloha Place Oceano, CA 93445-9735 San Luis Obispo County
Type of Waste:	Municipal wastewater and brine wastes
Treatment:	Effluent is treated to secondary treatment standards
Disposal:	Treated wastewater is discharged to the Pacific Ocean at a depth of approximately 55 feet through a 4,400 foot outfall/diffuser system
Facility Design Flow:	5.0 million gallons per day (MGD) (dry weather monthly average) and 9.0 MGD (peak wet weather)
Existing Orders:	Waste Discharge Requirements Order No. R3-2009-0046, National Pollutant Discharge Elimination System Permit No. CA0048003 (NPDES Permit); Sanitary Sewer Collection System Order 2006-0003-DWQ, Amended Monitoring and Reporting Program (MRP) No. 2008-0002-EXEC (Sanitary Sewer Collection System Order)
Requested Action:	Modify/Adopt Complaint No. R3-2012-0030.

SUMMARY

The attached Complaint alleges that the South San Luis Obispo County Sanitation District (Discharger) caused untreated wastewater discharges to surface waters of the United States on December 19 and 20, 2010. The alleged discharge is a violation of sections of the California Water Code (CWC) and Federal Water Pollution Control Act (Clean Water Act). The sanitary sewer overflow reaching surface water was unauthorized and caused by the Discharger's failure to maintain and operate its sanitary sewer collection system, as required by their NPDES permit adopted by the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) and Sanitary Sewer Collection System Order adopted by the State Water Resources Control Board (State Water Board). This draft Order (Attachment 1) recommends \$1,408,007.50 in administrative civil liability from the Discharger, which varies from the recommended Administrative Civil Liability complaint (ACLC, Attachment 2) prepared by the Central Coast Water Board and State Water Board, Office of Enforcement staff's (Prosecution Team).

Both the Prosecution Team and the Discharger prepared Cases in Chief for the hearing, including briefs (Briefs are Attachments 3 and 4, respectively, along with some supporting material). The Prosecution

Team also prepared a rebuttal brief (Attachment 5). The Discharger and Prosecution Team vary significantly in calculated volume of wastewater discharged to surface waters. The Discharger also disagrees with the Prosecution Team's application of penalty factors and thus the penalty amount. For the volume and penalty, the Discharger asserts that both should be much less than calculated. The Prosecution Team disagrees with the Discharger's evaluation, for the reasons listed in this staff report and attachments. Thus, the Prosecution Team recommends that the Central Coast Water Board enter an order consistent with the complaint.

DISCUSSION

Background:

The Discharger owns and operates a sanitary sewer collection system (hereafter collection system) and a wastewater treatment plant (WWTP), providing both conveyance and treatment services for the City of Arroyo Grande, City of Grover Beach, and the Oceano Community Services District. The Discharger's collection system is comprised of approximately nine miles of gravity trunk sewers ranging from 15 to 30 inches in diameter that lead into the Discharger's WWTP, located adjacent to the Oceano County Airport and the Pacific Ocean. The Discharger is required to operate the WWTP in accordance with Central Coast Water Board's NPDES permit and the collection system in accordance with State Water Board's Sanitary Sewer Collection System Order.

On December 19, 2010, the Discharger's WWTP influent pump station automatically shut down after floodwater entered an electrical conduit leading into a pump motor control system located within the WWTP influent pump station. The penetrating floodwater short-circuited a critical motor, which resulted in a loss of power supply to all the influent pumps in the pump station. The loss of power caused untreated sewage to back up in the collection system (surcharge), discharging untreated sewage into nearby surface water (Arroyo Grande Creek, Oceano Lagoon, and the Pacific Ocean) and nearby private residences.

Spill Estimate:

On December 22, 2010, the Discharger reported an estimated 898,600 gallons of sewage was discharged into surface waters in their initial report on the State Water Board's online database (CIWQS SSO). In a written report dated January 3, 2011, the Discharger submitted a revised estimate of 384,200 gallons for the overflow volume. On May 31, 2011, the Discharger revised the overflow volume again to 417,298 gallons. As of June 16, 2012, the CIWQS SSO database shows 418,842 gallons of sewage reaching surface waters, as reported by the Discharger.

Since the sewage spill in December 2010, Prosecution Team staff have inspected the facility as well as reviewed the Discharger's historical operational records. As described in the appendices to this staff report, the Discharger calculated the overflow volume using three separate calculation methodologies to determine the estimated volume spilled and concluded that the hydraulic grade line (HGL) methodology was appropriate to use. In its May 31, 2011 response to the Notice of Violation letter dated April 18, 2011, the Discharger calculated that 417,298 gallons of sewage was discharged to surface water.

The Prosecution Team disagreed with the calculation methodology and instead did its own calculation. Using data that the Discharger collected from 2008 to 2010 from operations of its own facility, including wet and dry weather flow volumes, the Prosecution Team estimated that 1,139,825 gallons of untreated sewage was discharged to surface water as detailed in the Complaint.

Summary of Prosecution Brief

The Prosecution Team states that the Discharger violated Waste Discharge Requirements Order no. R3-2009-0046, Clean Water Act section 301, and Order No. 2006-0003-DWEQ Statewide Waste Discharge Requirements for Sanitary Sewer Systems (Sanitary Sewer Collection System Order).

As detailed in the ACL complaint (Attachment 2) the alleged violations include:

- The Discharger violated Discharge Prohibition G of Order No. R3-2009-0046 which states, "The overflow or bypass of wastewater from the Discharger's collection, treatment, or disposal facilities and the subsequent discharge of untreated or partially treated wastewater, except as provided for in Attachment D, Standard Provision I.G (Bypass), is prohibited.
- The Discharger violated Provision VI.C.6 of Order No. R3-2009-0046 which states, "Stormwater flows from the wastewater treatment process areas are directed to the headworks and discharged with treated wastewater. These stormwater flows constitute all industrial stormwater at this facility and, consequently, this permit regulates all industrial stormwater discharges at this facility along with wastewater discharges."
- The Discharger violated the Standard Provisions (Attachment D-1.8.2) to Order No. R3-2009-0046, which states, "All facilities used for transport or treatment of wastes shall be adequately protected from inundation and washout as the result of a 100-year frequency flood."
- The Discharger violated section 301 of the Clean Water Act, which prohibits the discharge of pollutants to waters of the United States except in compliance with an NPDES permit. The discharge of untreated sewage to the Pacific Ocean was not in compliance with the Discharger's NPDES permit.
- The Discharger violated Prohibition C.1 of the Sanitary Sewer Collection System Order which states, "Any SSO that results in the discharge of untreated or partially treated wastewater to waters of the United States is prohibited."
- The Discharger violated Prohibition C.2 of the Sanitary Sewer Collection System Order which states, "Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in CWC section 13050(m) is prohibited."
- The Discharger violated Provision D.8 of the Sanitary Sewer Collection System Order which states in part, "The Enrollee shall properly manage, operate, and maintain all parts of the sanitary sewer system owned and operated by the enrollee ...".
- The Discharger violated Provision D.10 of the Sanitary Sewer Collection System Order which states, "The Enrollee shall provide adequate capacity to convey base flows and peak flows, including flows related to wet weather events."
- The Discharger violated section A.6 of the Sanitary Sewer Collection System Order Amended Monitoring and Reporting Program, which states, "All SSOs that meet the above criteria for Category 2 SSOs must be reported to the Online SSO Database within 30 days after the end of the calendar month in which the SSO occurs."

The Prosecution Team provided an estimated spill volume with detailed analyses included in a technical report attached to the brief. The Prosecution Team's spill estimate uses historic influent and effluent flow data, measured influent flow data just before and after the overflow, the reported volume pumped around the influent pump station during the event, and infiltration/inflow information from a Discharger's study to calculate an estimated overflow volume. Because the influent flow meter was not operable during the spill event, accurate influent data was not available and had to be estimated.

The Prosecution Team states that the Discharger's spill estimation methods underestimated the sewer overflow and are an oversimplified approach that is less reliable than the Prosecution Team's method. The Discharger's overflow estimate utilizes the hydraulic grade line method for determining the volume discharged from the collection system. The method evaluates the water level in the collection system based on observations at various points in the collection system, determines a hydraulic grade line (height of water) in the system, and evaluates the volume of discharge from manholes or other surcharge locations. The Discharger's method assumes the system reaches equilibrium as the upstream flows into the system match the flows out of the system, assumes the hydraulic grade line is the same for all discharge points, and requires flow estimates from manholes based on visual observations. The Prosecution Team states that the system never reached equilibrium due to the varied flows into the system and the varied rate with which pumps were used to bypass the influent pumps. The Prosecution Team indicates that the determining the hydraulic grade line is not possible because of area flooding and the fact that system was open with various opportunities for flows into and out of the collection system. Finally the Prosecution Team disputes the reliability of using visual observations to determine flows from manholes or other overflow locations.

The Prosecution Team provided an analysis for determining the penalty amount. The technical report attached to the brief details steps that were followed by the Prosecution Team and are required by the Enforcement Policy to determine a monetary penalty for the SSO event. Those steps include:

1. Potential for harm for discharge violations
2. Assessments for discharge violations
3. Per day assessments for non-discharge violations
4. Adjustment factors
5. Determination of total base liability amount
6. Ability to pay and ability to continue business
7. Other factors as justice may required
8. Economic benefit
9. Maximum and minimum liability amounts
10. Final liability amount

Within the above steps the Prosecution Team considered the potential harm to beneficial uses, characteristics of discharge, susceptibility to cleanup or abatement, the Dischargers compliance history, culpability, and Discharger cooperation.

The Prosecution Team utilized budget data from the Discharger's 2004-2005 budget to evaluate economic benefit for the spill. The Discharger listed electrical work and headworks wiring projects that were not completed prior to the spill event to calculate financial benefit realized by the Discharger. Finally the Prosecution Team included staff cost information and included staff costs in the final penalty recommendation.

Summary of South County Sanitation District Brief

The Discharger states that the events leading up to and causing the SSO on December 19 and 20, 2010, were beyond the control of the Discharger. The Discharger indicates that a significant storm event caused flood waters in neighboring areas to flow into the WWTP property flooding the influent headworks and causing an electrical failure shutting down plant influent pumps. Operators then attempted to start the emergency backup pump, but were only able to open the pump discharge valve one-third of the way open due to rising water and the fact that the valve is located in the then flooding headworks. The valve was fully open approximately three hours later when the water in the headworks was pumped down so operators could access and open the valve.

The Discharger provided a spill volume estimate of 417,000 gallons based on hydraulic grade line calculations supported by observations and photographic evidence. The Discharger indicates that overflows occurred from eight manholes in the District's collection system and eleven manholes in the Oceano Community Services District collection system. The estimate is based on the hydraulic grade line in the collection system (water level in the collection system) at 12.5 feet. The Discharger states that SSOs occurred at manholes with an elevation less than 12.5 feet, based on visual observations made that day, photographic evidence, and inspections of manhole covers after the event occurred.

The Discharger indicates that there is no evidence that the collection system was improperly operated or maintained as alleged by the Prosecution Team. The spill was not caused by lack of collection system capacity or failure to maintain the collection system, but because of a large storm event and the influent pumping system at the WWTP failed.

The Discharger argues the event should be considered a plant upset and that if it was an upset the Discharger should get relief from enforcement actions. The Discharge indicates that federal regulations define an upset as "an exceptional incident in which there is unintentional and temporary noncompliance with effluent limitations because of factors beyond the reasonable control of the Discharger." (brief page 9, paragraph 2). The Discharger states that an upset occurred due to identifiable causes, that the facility was being properly operated at the time of the upset, that notice of the upset was submitted to the Regional Board, and that remedial measures were implemented by the Discharger as required. These four issues are required for an upset defense.

The Discharger indicates that the ACLC alleges an overflow or bypass of the collection, treatment or disposal system was allowed in violation of Order R3-2009-0046. The Discharger states that they are covered by the Bypass defense and points out that Order R3-2009-0046 provides for exceptions to the bypass requirement if the bypass is unavoidable, there are no feasible alternatives to the bypass, and the Discharger provides bypass notice to the Regional Board. The Discharger argues that they met all of the requirements to allow for a bypass. Once the influent pumps failed the Discharger had no way to get water through the treatment plant causing the bypass of the treatment process. Plant operators worked to slow or stop the bypass by operating the emergency backup pump and calling for assistance from other agencies and the Discharger properly notified the Regional Board.

The Discharger states that the SSO Waste Discharge Requirements allegations required consideration of other factors not considered by the Prosecution Team. The Discharger points out that it was in compliance with all programmatic requirements of the SSO WDRs including development and implementation of a sewer system management program (SSMP). The Discharger argues that the Prosecution Team found no issues with the SSMP and that the Prosecution Team found no other cause of the SSO other than the significant rain event and flooding that occurred.

The Discharger states that the Prosecution Team failed to prove that the rain events that occurred on December 19 and 20, 2010 were not a 100-year storm event(s). The Discharger indicates that the Prosecution Team alleges that the facility was not adequately protected from inundation and washout as a result of a 100-year storm event, but the Prosecution Team provided no evidence that the Discharger's facilities were not protected from such events. The Discharger indicates that the Prosecution Team did not provide evidence on how a 100-year event was defined.

The Discharger states that the Prosecution Team failed to provide evidence that prove nuisance actually occurred.

The Discharger states that the complaint improperly imposes penalties for discharges from private laterals. The Discharger indicates that spills from private laterals should not be considered category 1 spills as they

are spills from private residence and not from the Discharger's collection system. They argue that private lateral spills are category 2 spills that only need to be reported within 30 days of occurrence and do not need to be certified by the Discharger as alleged by the Prosecution Team.

The Discharger states that the complaint goes beyond the regulatory authority of the permits. The Discharger argues that it should only be liable for discharges from its collection system and not from discharges from satellite systems and therefore the discharges from the Oceano CSD collection system should be the responsibility of the Oceano CSD and not the Discharger.

The Discharger states that the unreasonably high penalties are unconstitutional in that there should be adequate consideration of the statutory factors and discretion should be exercised.

The Discharger provides responses to the Prosecution Teams brief and argues that the spill volume estimates provided by the Prosecution Team lack sound engineering basis and significantly overestimate the spill volume. The Discharger argues that their spill volume calculations are more reasonable and sound based on analysis of the Prosecution Teams calculations and methodology.

The Discharger indicates that the proposed penalty is not consistent with other ACLs statewide. The Discharger provides examples of spills in other parts of the state with substantially lower penalties, but with higher overflow volumes. In addition the Discharger states that the Prosecution Team failed to provide evidence to support the numbers assigned to the factors considered in determining the penalty.

The Discharger further states that their other enforcement history at the facility is irrelevant. Previous violations at the facility were not related to the collection system operation and therefore are not relevant to the case involving the collection system and should not be considered by the Prosecution Team in developing ACLC.

The Discharger argues that the Prosecution Team failed to provide expert testimony or citations to support information regarding the storm size for December 19 and 20, 2010. The Prosecution Team provided no evidence to support statements indicating the storms ranged from a 10-year, one-day event to a 25-year, two-day event. The Discharger indicated the Prosecution Team failed its burden of proof for the significance of the storm event.

The Discharger argues that the staff costs produced by the Prosecution Team are unreasonable and unsubstantiated. The Discharger states that there are no corroborating time sheets or evidence to support the staff costs alleged by the Prosecution Team for staff costs that are higher than numerous enforcement cases statewide.

The Discharger states that they received no economic benefit from the incident. The Discharger indicates that the electrical work that was listed in the 2004-2005 budget would not have corrected the problem that caused the influent pumps to fail and ultimately led to the SSO. The Prosecution Team's use of budget item data from the 2004-2005 budget to calculate economic benefit is not appropriate.

The Discharger argues that they have no reasonable ability to pay the penalty and that the Prosecution Team assumptions are erroneous. The Discharger indicates the penalty would equate to one-third of their fiscal year 2012-13 budget. Additionally the Discharger indicates that paying the penalty while incorporating revenues and expenditures for the current budget would leave the Discharger with a negative balance. The Discharger points out that passing the costs on to ratepayers is not practical and requires ratepayer approvals which is difficult to receive.

Summary of Prosecution Team's Rebuttal to Discharger's Brief

The Prosecution Team points out that the facility upset defense does not apply in the case because upset clause applies to noncompliance with technology-based effluent limits. The ACLC is not alleging noncompliance with technology-based effluent limits; rather it's alleging violations related to a sanitary sewer overflow.

The Prosecution Team indicates that the bypass defense does not apply. A bypass is an intentional diversion of wastewater around treatment processes. By the Dischargers own admission the SSO was not intentional. A bypass relates to bypassing certain parts of a treatment process, the Discharger did not bypass treatment processes, it was an SSO.

The Prosecution Team reaffirms that the penalty is consistent with the enforcement policy and other ACLs for similar cases and provides a list of cases and dollar values associated with those cases. The Prosecution Team is proposing a \$1.21 a gallon penalty based on the Prosecution Team's estimated volume. The amount is lower than penalties applied to other cases including North Tahoe Public Utility District (\$1.85/gallon), City of Oakland (\$1.88/gallon, Grass Valley (\$1.55/gallon), Redwood City (\$1.67/gallon), Sebastopol (\$2.74/gallon), Ukiah (\$4.42/gallon), and Irvine Ranch (\$2.06/gallon). The Prosecution Team acknowledges all these cases are different, they point out that they considered the circumstances of this spill and chose factors based on the Enforcement Policy.

The Prosecution Team states that their spill estimates are the only ones that take all factors into consideration and that the Discharger's estimates are unreliable and inconsistent.

The Prosecution Team states that lateral spills caused by the Dischargers collection system sewer mains backing up and causing overflows into private homes are not by definition private lateral spills. Private lateral spills are spills caused by the private property owner. The spills in question were caused by the Discharger not operating influent pumps, allowing sewage to backup into laterals and spill in private residences.

Penalty Factors and Amount

CWC Sections 13327 and 13385(e) require the Central Coast Water Board to consider several factors when determining the amount of civil liability to impose. These factors include the nature, circumstances, extent, and gravity of the violation or violations and the degree of toxicity of the discharge. With respect to the violator, the Board must consider the discharger's ability to pay, prior history of violations and the violator's degree of culpability. Additionally, the State Water Board adopted a Water Quality Enforcement Policy (Enforcement Policy) in November 2009 (approved by the Office of Administrative Law on May 20, 2010) which outlines a calculation methodology for ACL assessments and the draft Order provides brief discussion of each of the factors in this methodology. All regional boards are required to use this Enforcement Policy when adopting, rejecting or modifying orders. The calculation methodology provides guidance as to how the boards are allowed to exercise their discretion while at the same time providing ranges for penalty factors that can provide consistency in penalties across the various regions. Central Coast Water Board members have been provided copies of the Enforcement Policy.

Comment letters were received for this item and have been included with this staff report as Attachment 6.

CONCLUSION

The draft Order attached is included as a starting point in advance of the forthcoming additional testimony as part of the September 7, 2012 hearing. The recommended administrative civil liability of \$1, 408,007.50 includes recovery of Prosecution Team oversight costs through the issuance of the complaint, and such costs have continued, and any Order entered by the Board can be adjusted to account for continuing costs. These costs are proper under the Enforcement Policy (see Pgs. 19-20).

ATTACHMENTS

1. Draft Order No. R3-2012-0041
2. ACL Complaint No. R3-2012-0030, which includes transmittal cover letter, Notice of Public Hearing, and Technical Report for Noncompliance
3. Prosecution Team Case In Chief, which includes a brief and a supporting technical report
4. South San Luis Obispo County Sanitation Districts Case in Chief, which includes a brief, an Evidence List, and a Witness List
5. Prosecution Team Rebuttal to South SLO County District Case in Chief, which includes a brief, an Evidence List, and a Witness List
6. Comment letters